

MINUTES

MONTANA SENATE 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN MIKE WHEAT**, on February 19, 2005 at 8:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Mike Wheat, Chairman (D)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jon Ellingson (D)
Sen. Jesse Laslovich (D)
Sen. Jeff Mangan (D)
Sen. Dan McGee (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Jim Shockley (R)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Mari Prewett, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted:

Executive Action: SJ 27, SJ 26, SB 400, SB 399;
SB 397, SB 394, SB 392, SB 391;
SB 416, SB 258

EXECUTIVE ACTION ON SJ 27

Motion: SEN. CROMLEY moved that SJ 27 DO PASS.

Discussion:

SEN. CURTISS stated that she could not support the bill because of the ongoing controversy in the U.S. Senate over the proposed legislation, and, over the terms of the proposed resolution for the litigation problem. She went on to say that she did not want to send a message in a resolution that could prove to be offensive.

SEN. MCGEE expressed an idea he had for an amendment to SJ 27. He read his proposed language for the amendments to Line 21 and for Line 25.

Motion: SEN. MCGEE moved that THE CONCEPTUAL AMENDMENT BE ADOPTED.

Discussion:

SEN. CROMLEY asked for another reading of the conceptual amendment.

Motion/Vote: SEN. MANGAN CALLED THE QUESTION ON THE CONCEPTUAL AMENDMENT. Motion carried 8-4 by voice vote with SEN. ELLINGSON, SEN. LASLOVICH, SEN. PEASE, and SEN. WHEAT voting no.

SEN. CURTISS stated that one of the bones of contention in the U.S. Senate was that the amount was not large enough. She went on to say that maybe they should change the language so that it did not allude to the \$140 billion figure.

SEN. MCGEE proposed two more conceptual amendments, one on Page 2, Line 1, and, the second, on Line 3. He then read the bill as it would read with the proposed amendments.

Motion/Vote: SEN. MCGEE moved the TWO CONCEPTUAL AMENDMENTS BE ADOPTED. Motion failed 6-6 by roll call vote with SEN. CROMLEY, SEN. CURTISS, SEN. MCGEE, SEN. O'NEIL, SEN. PERRY, and SEN. SHOCKLEY voting aye.

Motion: SEN. O'NEIL moved a CONCEPTUAL AMENDMENT to Page 2, Line 22, BE ADOPTED. Motion failed 2-10 by voice vote with SEN. O'NEIL and SEN. CURTISS voting aye.

SEN. PERRY asked if Lines 24 and 25 on Page 1 were still intact. **SEN. WHEAT** explained that the lines had been changed by **SEN. MCGEE'S** amendment.

Motion/Vote: **SEN. MANGAN CALLED THE QUESTION ON SJ 27. Motion carried 10-2 by voice vote with SEN. CURTISS and SEN. MCGEE voting no.**

{Tape: 1; Side: A; Approx. Time Counter: 0 - 12.1}

EXECUTIVE ACTION ON SJ 26

Motion: **SEN. CURTISS moved that SJ 26 DO PASS.**

Discussion:

SEN. CURTISS stated that she felt that this resolution would be more persuasive and would not raise any issue because of negative connotations. She advised that this resolution would not limit the amount of funds for the trust fund that is to be set up. **SEN. CURTISS** provided the Committee with information on what was happening in the U.S. Senate regarding the asbestos litigation. A copy of this information is attached as Exhibit 1. **SEN. CURTISS** stated that they did not want a sunset to be put on this litigation.

EXHIBIT(jus41a01)

Motion/Vote: **SEN. MANGAN CALLED THE QUESTION ON SJ 26. Motion carried unanimously.**

{Tape: 1; Side: A; Approx. Time Counter: 12.1 - 15.9}

EXECUTIVE ACTION ON SB 400

Motion/Vote: **SEN. MANGAN moved that SB 400 BE TABLED. Motion carried 11-1 by voice vote with SEN. O'NEIL voting no.**

{Tape: 1; Side: A; Approx. Time Counter: 15.9 - 17.3}

EXECUTIVE ACTION ON SB 399

Motion: **SEN. MCGEE moved that SB 399 DO PASS.**

Motion: SEN. MCGEE moved that AMENDMENT NO. SB039901.APM BE ADOPTED.

Discussion:

SEN. MCGEE explained the amendment.

Vote: Motion that AMENDMENT NO. SB039901.APM BE ADOPTED carried unanimously by voice vote.

Motion: SEN. MCGEE moved that SB 399 DO PASS AS AMENDED.

Discussion:

SEN. CROMLEY asked what had happened to the other open meeting law bill. CHAIRMAN WHEAT stated that he recollected that it had passed and that it had referred to all of the meetings except when they were discussing adversarial matters.

Motion/Vote: SEN. MANGAN CALLED THE QUESTION ON SB 399. Motion failed 4-8 by roll call vote with SEN. CURTISS, SEN. MCGEE, SEN. O'NEIL, and SEN. PERRY voting aye.

Motion/Vote: SEN. MANGAN moved that SB 399 BE TABLED AND THE VOTE REVERSED. Motion carried unanimously.

{Tape: 1; Side: A; Approx. Time Counter: 17.3 - 21.3}

EXECUTIVE ACTION ON SB 397

Motion: SEN. MCGEE moved that SB 397 DO PASS.

Discussion:

SEN. MCGEE explained that the bill simply referred to the electorate vote which would overturn a court ruling which would overturn a legislative action. He further stated that it would put the people back in charge instead of the Court.

SEN. CROMLEY stated that it would simplify government because it would reduce the three branches of government to two, however, he was opposed to the bill.

SEN. O'NEIL stated that if it were a simple majority vote, of one vote, for both houses he would oppose the bill, but with the two-thirds vote of both houses he felt it would be exceedingly hard

to overturn a decision of the Supreme Court, therefore, he stood in support of SB 397.

SEN. LASLOVICH made a substitute motion to TABLE SB 397. Motion carried 7-5 by roll call vote with **SEN. CURTISS**, **SEN. MCGEE**, **SEN. O'NEIL**, **SEN. PERRY**, and **SEN. SHOCKLEY** voting no.

{Tape: 1; Side: A; Approx. Time Counter: 21.3 - 23.9}

EXECUTIVE ACTION ON SB 394

Motion: **SEN. SHOCKLEY** moved that SB 394 DO PASS.

Discussion:

SEN. SHOCKLEY asked if they felt that the Supreme Court was inept what would happen if the Supreme Court Judges were not lawyers.

SEN. MCGEE objected to **SEN. SHOCKLEY'S** comment and asked if lawyers were the only learned people. He went on to express his opposition to the implication that only lawyers were fit to sit on the Supreme Court as judges.

SEN. SHOCKLEY explained that it had nothing to do with whether or not the person was smart, it had to do with training.

SEN. O'NEIL expressed his opinion on individuals he felt would be qualified to be a judge, other than attorneys.

{Tape: 1; Side: A; Approx. Time Counter: 23.9 - 29.6}

SEN. CROMLEY remarked that the bill left in the language that an individual would have to be a lawyer to be a District Court Judge but would not need to be one to be a Supreme Court Judge. Therefore, to be consistent they would need to make so that a non-lawyer could be a District Court Judge. He further stated that he opposed the bill.

SEN. PERRY stated that he felt that maybe they should have a little less technique and a little more reason, logic and science involved.

CHAIRMAN WHEAT reminded everyone that all of the bills drafted for the legislature were either drafted by a lawyer or went through legal review in Legislative Services before it could be presented.

Motion/Vote: SEN. MANGAN CALLED THE QUESTION ON SB 394. Motion failed 2-10 by voice vote with SEN. MCGEE and SEN. O'NEIL voting aye.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 2.6}

Motion/Vote: SEN. MCGEE moved to ADJOURN SENATE JUDICIARY. Motion failed 5-7 by roll call vote with SEN. CURTISS, SEN. MCGEE, SEN. O'NEIL, SEN. PERRY and SEN. SHOCKLEY voting aye.

Motion: SEN. LASLOVICH moved that SB 394 BE TABLED AND THE VOTE REVERSED.

{Tape: 2; Side: A; Approx. Time Counter: 2.6 - 4}

The Committee took a five minute recess.

EXECUTIVE ACTION ON SB 392

Motion/Vote: SEN. MANGAN moved that SB 392 BE TABLED. Motion carried unanimously.

{Tape: 2; Side: A; Approx. Time Counter: 4 - 4.6}

EXECUTIVE ACTION ON SB 391

Motion/Vote: SEN. MANGAN moved that SB 391 BE TABLED. Motion carried 8-4 by roll call vote with SEN. CURTISS, SEN. MCGEE, SEN. O'NEIL, and SEN. PERRY voting no.

{Tape: 2; Side: A; Approx. Time Counter: 4.6 - 5.8}

EXECUTIVE ACTION ON SB 416

Motion: SEN. CURTISS moved that SB 416 DO PASS.

Discussion:

SEN. PERRY stated that he felt it was a good bill and he was going to support it.

SEN. CURTISS expressed her disappointment with the information provided by the Department. She then talked about the information she had gleaned from the report furnished by Ms. Pfeiffer. SEN. CURTISS then discussed the report she had

received from the Legislative Branch. She went on to say that she felt the Department needed to determine just how effective the program is as a tool for making collections.

SEN. SHOCKLEY stated that Montana now recognizes orders from agencies in other states and they have no way of knowing what due process was received, and no way of knowing anything about the case. He further stated that defending these out-of-state orders costs too much for the individuals, so they should at least let them be able to go to work. He went on to say that Child Support Enforcement people simply are not reasonable. He concluded by providing the Committee with a true story of an incident he was involved with.

SEN. CROMLEY remarked that they had heard a similar bill two years ago and they had been informed that this was a very effective tool for collecting child support. He further stated that he felt there was ample opportunity for the individual owing the child support to work out an arrangement to pay that child support. He concluded by saying he was going to vote against the bill.

Motion: **SEN. O'NEIL** moved that **A CONCEPTUAL AMENDMENT BE ADOPTED.**

Discussion:

SEN. O'NEIL explained his conceptual amendment and how it would affect the language of the bill.

Vote: Motion that the **CONCEPTUAL AMENDMENT BE ADOPTED** carried 9-3 by voice vote with **SEN. CURTISS**, **SEN. MCGEE**, and **SEN. MOSS** voting no.

Motion: **SEN. SHOCKLEY** moved that **SB 416 DO PASS AS AMENDED.**

Discussion:

SEN. ELLINGSON expressed his opposition to the bill.

SEN. PERRY stated that he agreed with **SEN. SHOCKLEY** that people need to be able to drive to work. He went on to say, if they could not get to work they would not be able to pay the payments. He concluded by saying that they should support the bill.

SEN. SHOCKLEY stated that he disagreed with **SEN. ELLINGSON** and explained his reasons.

Motion/Vote: SEN. MANGAN CALLED THE QUESTION ON SB 416. Motion failed 5-7 by roll call vote with SEN. CURTISS, SEN. MCGEE, SEN. O'NEIL, SEN. PERRY, and SEN. SHOCKLEY voting aye.

Motion/Vote: SEN. LASLOVICH moved that SB 416 BE TABLED AND THE VOTE REVERSED. Motion carried 11-1 with SEN. MCGEE voting no.

{Tape: 2; Side: A; Approx. Time Counter: 5.8 - 23.5}

EXECUTIVE ACTION ON SB 258

Motion: SEN. WHEAT moved that SB 258 DO PASS.

Motion/Vote: SEN. MCGEE moved that SB 258 BE TABLED. Motion failed 5-7 by roll call vote with SEN. CURTISS, SEN. MCGEE, SEN. O'NEIL, SEN. PERRY, and SEN. SHOCKLEY voting aye.

SEN. MANGAN asked CHAIRMAN WHEAT how this bill would stop a phantom seismograph company from going onto someone's land, tearing it up and not repairing it. CHAIRMAN WHEAT replied that with the bill, before anyone could go on the property to conduct any oil or gas operations, they would have to notify the surface owner. He went on to say that they would also have to have entered into a surface use agreement.

SEN. MANGAN asked CHAIRMAN WHEAT if currently an oil or gas company would have cart blanche to go on someone's land, tear up their fence and their land without telling anyone. CHAIRMAN WHEAT responded, under existing law, they would have to give ten days notice before going on the property. He went on to say that what they do when they are on the property would be up to them. If they tore everything up the land owner would have the right to go after them.

SEN. MANGAN further inquired of CHAIRMAN WHEAT, if they gave notice and something happened under current law, what remedies would the landowner have. CHAIRMAN WHEAT responded that his understanding under current law, is that there would be a blanket bond for reclamation purposes, however, if the landowner wanted to sue for anything else, they would have to file a complaint with the court.

CHAIRMAN WHEAT inquired of Mr. Ebzery if he agreed with him. Mr. Ebzery stated that under present law the individuals would have violated the law whether SB 258 passed or not.

SEN. MANGAN asked **CHAIRMAN WHEAT** what this bill would do different from current law with regard to the damage. **CHAIRMAN WHEAT** responded that if someone did not follow the law, under SB 258, there would be additional remedies open to the surface owner other than just filing a lawsuit.

SEN. MCGEE moved to amend SB 258 with all of the amendments that had been provided at the last hearing. **Ms. Lane** indicated that those amendments had already been adopted and were in the bill.

SEN. MCGEE withdrew his motion.

There was further discussion regarding the amendments that had been previously adopted.

SEN. MCGEE proposed a conceptual amendment to SB 258 regarding bond amounts for well sites. He explained that for well sites, where they drilled 3,500 feet or less, the maximum bond amount would be \$2,500. He went on to say that for those sites which were over 3,500 the maximum bond amount would be \$6,500 per well site. **SEN. MCGEE** then explained how he had come up with these figures.

Motion: **SEN. MCGEE** moved that the **CONCEPTUAL AMENDMENT BE ADOPTED**.

Discussion:

SEN. SHOCKLEY stated that he had spent considerable time talking with the industry people, therefore, he felt that this was a good amendment for the conventional oil and gas wells. He went on to say that he did not feel it would be enough for the coal bed methane wells. He indicated to the Committee that he also had amendments to SB 258.

CHAIRMAN WHEAT asked **Mr. Ebzery** if he had a comment on **SEN. MCGEE'S** conceptual amendment. **Mr. Ebzery** stated that the information he had provided to **SEN. MCGEE** was the industry's best good faith observation at this time.

SEN. MOSS asked **Cory Ferguson of Northern Plains** to respond to the questions regarding the levels of bonding. **Mr. Ferguson** stated that the bond limits set for conventional oil and gas wells would be sufficient to cover damages. He went on to say that he was not sure that the maximum bond would be enough to cover damages created by coal bed methane wells.

CHAIRMAN WHEAT agreed that, after talking to all parties involved, the maximum bond amounts would be enough for

conventional gas and oil drilling. He went on to say that he felt they needed to address the differences between conventional oil and gas wells and coal bed methane wells. He further stated he would like to do that in HB 258. **SEN. WHEAT** explained that he would like to put **SEN. MCGEE'S** amendment on the bill, move the bill forward, and then continue to work with the industry to make a distinction in the bill between oil and gas and coal bed methane wells.

SEN. ELLINGSON asked if, as they were working on the bill, they could make the distinction between reclamation work and damage repair.

CHAIRMAN WHEAT stated that if the bonding established with regard to traditional oil and gas wells is sufficient and there had not been any problems, he did not see a need to change it. He went on to suggest that they pass the bill, get it to the floor of the Senate, and continue to work on it. He further stated he would make the commitment to the Committee that he would continue to work on the bill to make the distinction between traditional oil and gas and coal bed methane.

SEN. MCGEE withdrew his motion to adopt the conceptual amendment.

SEN. SHOCKLEY stated that he had some amendments which he felt would solve some of the problems.

Motion: **SEN. SHOCKLEY** moved that **AMENDMENT NO. SB025803.AVL BE ADOPTED.**

Discussion:

SEN. SHOCKLEY explained the amendment to the Committee.

CHAIRMAN WHEAT indicated that in the amendment they were changing the language back to "oil and gas" rather than, "oil or gas". He went on to say, substantive amendments would take more time to discuss, therefore, he would like to segregate it so that they were just changing it back to oil and gas at this point. He then asked **SEN. SHOCKLEY** if he would be agreeable to that idea. **SEN. SHOCKLEY** responded that it would be okay with him.

Ms. Lane suggested that they take out amendments 35, 38 and 39.

Substitute Motion/Vote: **SEN. SHOCKLEY** moved that **AMENDMENT NO. SB025804.AVL** minus numbers 35, 38 and 39 **BE ADOPTED.** Motion carried unanimously.

SEN. MANGAN indicated that he was going to vote aye on the bill because of the Sponsor. He further stated that his vote should not be expected anywhere else.

Ms. Lane clarified how **SEN. SHOCKLEY'S** amendment affected the bill.

SEN. MCGEE stated that he applauded **CHAIRMAN WHEAT'S** plans as he felt they were the right approach for handling this type of contentious situation. He concluded by saying that he was willing to work on the bill as it went forward.

SEN. SHOCKLEY expressed his support to **CHAIRMAN WHEAT**.

Vote: Motion that SB 258 DO PASS AS AMENDED carried 9-3 by voice vote with **SEN. CURTISS**, **SEN. O'NEIL**, and **SEN. PERRY** voting no.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 26.7}

ADJOURNMENT

Adjournment: 9:31 A.M.

SEN. MIKE WHEAT, Chairman

MARI PREWETT, Secretary

MW/mp

Additional Exhibits:

EXHIBIT ([jus41aad0.PDF](#))